

Appl. No. 10/806,764
Response Dated December 27, 2005
Reply to Office Action of August 26, 2005

REMARKS/ARGUMENTS

Claims 1-12 are pending in this application and remain herein for consideration. Claim 13 has been previously cancelled. No new matter has been entered.

In the recent office action, the Examiner has rejected claims 1-5 and 7-12 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 4,255,896 to Carl in view U.S. Pat. No. 6,615,542 to Ware. The applicants respectfully disagree with the Examiner's characterization of this art and the Examiner's application of this art to applicant's claims. In order to establish the obviousness of a claim, the Examiner must show that all of the claim limitations are taught or suggested by the prior art. M.P.E.P. 2143.03. Regarding Applicants' independent claims, and also in all of Applicants' remaining claims through dependency, all of the limitations found in claim 1 and in claim 7 are not fairly taught or suggested by either Carl or Ware, or a combination of Carl or Ware.

For example, Applicants' claim 1 includes a plurality of stacked independent growing chambers, each of which having an inflow/outflow gate accommodated in the base of the container portion, a height adjustable overflow gate accommodated within said container portion; and drainage plumbing connecting said container portion with said reservoir." The Examiner cites "Fig. 2 coming from pump #34" as teaching the limitation of an inflow/outflow gate. However, applicants cannot find this limitation as described coming from pump #34 in Fig. 2.

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Carl states that pump 34 is connected to the upper-most duct 14 by a discharge conduit 36 and that the reservoir 32 is connected to each of the lower-most ducts 14A by a pair of return conduits. When the pump is operating, the nutrient enriched liquid is pumped from the reservoir 32 through the conduit 36 to the upper-most duct 14 where it flows through the length of the uppermost duct 14 before entering the next lower duct by way of the outlet tube 30. As such, the nutrient liquid flows in series through the ducts 14, from the uppermost duct to the lower-most duct before it is subsequently discharged back into the reservoir 32 by way of the return conduits 38.

The description in Carl (column 8, lines 48-52) states that in operation, the pump 34 elevates the fluid from a reservoir 32 into the uppermost duct 14 wherein it proceeds in a series path through each of the remaining ducts before being returned to the reservoir 32, and in column 7, lines 2-5, that upon discontinuance of the pumping cycle, the liquid maintained with the ducts 14 flows through the slot 52 formed in the outlet 30.

In contrast, Applicants' invention makes use of an inflow/outflow gate wherein when the pump is activated, the pump transports the nutrient composition from the reservoir through the inflow/outflow gate into the growing chambers, and when one of the growing chambers becomes flooded to the level of the overflow gate, the overflowing nutrient composition is returned to the reservoir via the drainage plumbing, and when the pump is deactivated, the nutrient composition remaining in each growing chamber returns to the reservoir via the inflow/outflow gate. Carl

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does not teach or suggest that any amount of nutrient found remaining in each growing chamber pass back to the reservoir via a conduit or any other component coming from pump 34.

Further, it would be impossible for Carl as taught to allow nutrient to flow to the reservoir from anything other than the upper-most duct because as described and illustrated. The pump 34 is connected to the upper-most duct 14 by a discharge conduit 36 whereas the reservoir 32 is connected to each of the lower-most ducts 14A by a pair of return conduits 38. The Applicants submit that the Examiner has confused the two distinctly different components of the discharge conduit 36 and the return conduit 38 with a single inflow/outflow gate as described and claimed in the present invention. Carl functions completely different than applicants' claimed subject matter and as such, alone or in conjunction with Ware, is unable to teach or suggest all of the Applicants' claim limitations.

Claims 2 and 8, which depend from Claims 1 and 7, respectively, add features to the novel claimed combinations of Claims 1 and 7 that as previously discussed are not taught or suggested by the cited references.

Similarly, Claims 3 and 9 are dependent from Claims 1 and 7, respectively, and these dependent claims also add features to the novel claimed combinations of Claims 1 and 7 that are not taught or suggested by the above references.

Claims 4 and 10 are also dependent from Claims 1 and 7, respectively, and these dependent claims also add features to the novel claimed combinations of Claims 1 and 7 that are not taught or suggested by the above references. Again, Applicants' believe that the Examiner

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characterization of outlet tube 28 and inlet tube 30, which are described in column 6, lines 7-24 of Carl is incorrect. As previously discussed, outlet tube 28 and inlet tube 30 are incapable of functioning as an inflow/outflow gate as described and claimed in the present invention, and therefore all of Applicants' claim limitations are not taught or suggested in the Carl reference.

For the same reasons as discussed in regards to Claims 4 and 10, the limitations of Claims 5 and 11 are also not taught or suggested by Carl.

Lastly, Claims 6 and 12, which depend from Claims 1 and 7, respectively, have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 4,255,896 to Carl in view U.S. Pat. No. 6,615,542 to Ware as applied to Claim 1 and 7, and further in view of U.S. Patent Bo. 4,006,559 to Carylton. For the same reasons as discussed in regards to Claims 1 and 7, the limitations of Claims 6 and 12 are also not taught or suggested by the cited references. Claims 6 and 12, being dependent from Claims 1 and 7, respectively, add features to independent Claims 1 and 7 which themselves have limitations that are not taught or suggested by the above cited references.

For at least the above reasons, the Examiner has failed to show that all of the claim limitations are taught or suggested by the prior art. Applicants believe that they have responded to all of the concerns raised by the Examiner. If the Examiner has any questions about the present response, a telephone interview is requested. Accordingly, the application is in condition for allowance and such action is respectfully solicited.

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A petition for extension of time under C.F.R. 1.136(a) is submitted along with the appropriate fee. Please charge or credit account number 50-3526. No additional fees are due.

Respectfully submitted,

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